



Use of Song Covers and/or Music in Human Rights Perspective

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Abstract. Intellectual property rights have an important role in Indonesia, this can be studied from economic, political, legal and human rights aspects. What this research discusses is pertaining to the use of music and/or cover songs, which is a human rights violation. It might be stopped if it violates the rules for the use of music or cover songs in YouTube videos. Human rights are violated when cover songs and/or music are used, and it is obvious that using cover songs and/or music in content without authorization is a breach of such rights. Along with breaking Government Regulation No. 56 of 2021 regarding Song/and/or Music Royalties, as well as the Joint Regulation No. 14 of 2015 and No. 26 of 2016 of the Ministers of Law and Human Rights of the Republic of Indonesia and Communication and Information regarding Closure of Content and/or Access Rights for Use of Violations of Copyright and/or Related Rights in Electronic Systems, it has also flagrantly violated Article 27 of the United Nations Charter, which deals with human rights.

Keywords: Song covers, Human rights perspective, Intellectual property

1 Introduction

Humans as owners of rights and obligations are in very rapid development, between the development and continuity needs related to Rights to Intellectual Property. One can research intellectual property rights from an economic, political, legal and human rights perspective. In the legal aspect, many intellectual property rights laws and regulations are the result of international pressure, although they still use the Pancasila philosophy and the 1945 Constitution as references, so that the legal products are adopted by western countries, this is as a result of the participation of the Indonesian government as a member. WTO, and WIPO (Word Intellectual Property Organization), and Indonesia's re-entry as a member of the "Bern Convention" for copyright. According to H. OK. Saidin, Intellectual Property Rights are classified into 2 (two), namely [1]:

- 1) Industrial Property Rights (Intellectual Property Rights);
- 2) Copyright (Copy Rights), then copyright is further classified into:
 - a) Copyright
 - b) Neighbouring Rights

There are still many violations of song and/or music copyright from the past until now, although the methods are different.

The song violation that occurred in Indonesia, which caused a stir and was criticized by the world, was because it allowed piracy of the song “We are the world”, where the song was originally intended to collect funds for social humanitarian donations for people with Aids in Africa which was organized by Bob Geldof, for “Live Aids”, was massively pirated in Indonesia.

Likewise, copyright violations of songs and/or music using CD/DVDs, which then saw advances in technology using internet systems via MP3, then recently copyright violations of songs and/or music have changed a lot through “Video Vlog” content [2]. YouTube, and Tiktok content, thus attracting creators to be creative by using song covers and/or music even without the rights[3]. The use of song covers using YouTube or TikTok content is the result of creators, but in fact many violations occur.

In Indonesia recently there have been many incidents related to the prohibition on the use of songs by musicians/songwriters on the use of their songs by musicians. Regarding the problems mentioned above, the researcher wants to conduct research on using music and/or songs through song covers and/or musical compositions, which is a form of public violation against the Creator or Related Rights Holder.

Problem Formulation

Considering the background mentioned above, the problem formulation is: Does the usage of music and/or song covers violate anyone’s human rights?

2. Results and Discussion

2.1 The use of song covers and/or music is a form of human rights violation

Law No. 28 of 2014, which deals with copyright, as intended in Article 40, regarding protected works including Science, Arts and Literature. There are rights that have been regulated in the Copyright Law which are owned by the Creator [4], in the form of the Creator’s Moral Rights, and Economic Rights, and likewise there are Related Rights in the form of: Rights Related to Moral Rights, and Rights Related to Economic Rights.

There are differences regarding the limits of copyright protection in various countries, but conceptually copyright protection has become a universal rule [5]. “Everyone is entitled to the protection of their material and ethical considerations that lead from any work of literature, art, or science that they are the author of; everyone is free to engage in the community’s cultural life, enjoy the arts, and benefit from scientific advancement”, according to Article 27 paragraph (1) of in the cultural life of the community.

Article 27, section (2) “ The right to appreciate the arts is inalienable for everyone, Engage in cultural events in your community, and make money off of scientific advancements.”

In the Preamble to the Constitution, it states: “----- Defend the entire country, and the entire bloodshed of Indonesia-----”, and Article 27 paragraph (2) of the NRI Constitution states that “ All Indonesians are entitled to employment and a good life for

all people” while Article 28 C paragraph (1) states that “ Everyone is entitled to education, self-improvement through meeting their fundamental needs, and the use of science, technology, the arts, and culture to enhance human welfare and quality of life.” Article 28 D paragraph (2): “ Everyone is entitled to work and to be treated fairly and appropriately in their working interactions.”

Hence, the basis for universal reference to copyright in Indonesia has fulfilled the UN The Republic of Indonesia’s constitution and the foundation of human rights, however, even if our people use songs and/or music from foreign countries, they are still subject to this rule, because copyright is universal, according to the universal concept that cannot be denied, that copyright has benefits for human life (life worthiness), and has economic value.

There are 3 (three) conceptions, namely:

- 1) Concept of Wealth;
- 2) Concept of Rights;
- 3) Concept of Legal Protection.

In the basic principles of copyright at the Bern Convention, there are 3 (three) principles of protection:

- 1) National Protection:

A work originating from one of the countries participating in the agreement (i.e. a creation of a citizen, a country participating in the agreement, or a work first published in one of the countries participating in the agreement) must receive the same copyright legal protection as a creation obtained by a citizen creator. Alone;

- 2) Automatic Protection:

Provision of legal protection must be provided automatically, without having to fulfill any conditions;

- 3) Independent Protection:

This legal protection must be given to creators who are foreign nationals, without having to rely on protective arrangements in the creator’s home country.

The use of songs and/or music, as long as it uses the rules that have been determined as a form of commercial service (public performance), certainly does not violate applicable legal regulations, however, if the use of songs does not comply with the rules or without permission from the Owner of Copyright and Related Rights. Indeed, it does not violate copyright law, as well as the human rights of the Owner of Copyright and Related Rights, however the use of song covers and/or music is permitted by the Owner of Copyright and Related Rights.

In Indonesia there is a phenomenon where a creator/singer prohibits his songs from being sung by other people or parties, even though the other party has paid the royalties [6]. According to researchers, these prohibitions are not actually related to prohibiting all users from using their songs, but rather “personal” prohibitions, because the song creator feels that he does not like his song being used by other parties who he does not “like” personally, due to various factors. , not forbidding everyone from using the song created in question.

Ethical prohibition on the creator, it happens because the user has ethically violated his rights, not related to the issue of money (royalty), but there is no “ethics” in using the song (Javanese). Without first notifying the creator or Related Rights Holders, there is

also a prohibition on the song being used by someone who is deemed by the creator to be impolite or erotic in singing his song. There is also a prohibition related to “band splits”, leaving personal disputes, which result in the prohibition of the use of his song by the same singer/musician. His group previously used it, even though legally they had paid royalties to LMKN.

The right to prohibit is basically an “Absolute Right”, as “Rights Theory” means: “Every absolute power given by law to a legal subject to do something or act will take their interests into account.” The owner of the rights, in copyright is called the Copyright Owner, so that someone who prohibits another party from using the song is a “personal right” owned by the Creator. Therefore, whether the user likes it or not must be subject to the Rights of the Creator who has prohibited it.

There are various opinions that agree with the prohibition on the use of songs by creators, but there are those who disagree regarding the prohibition on the use of songs by creators. This is because in fact there are striking differences about the usage of music and/or songs. Researchers do not agree with the ban on copyrighted music and/or music that has received royalties to LMKN or the owner of copyright/related rights. Since philosophically, the main intellectual property rights are “economic rights”, and do not ignore the creator’s moral rights. Moral rights are intrinsic, unassailable rights in the creator, despite the fact that another entity has acquired the copyright, researchers do not agree regarding “personal” prohibitions, because in fact they have no rationality, this is different if the reason is that the user violates copyright, and not paying the specified royalties.

There are legal professionals with expertise in intellectual property who reject the prohibition on using music and/or songs. They think that copyright has a social function, so that if royalties have been paid, anyone may utilize songs and/or music.

Philosophically, the use of songs and music which is a public performance (public service) does not require permission as long as the use of the song pays royalties. There are many foreign songs circulating in Indonesia, and song users in Indonesia do not need the composer’s permission to go to foreign countries, just pay via LKMN on royalties. Regulation No. 56 of 2021 issued by the government regarding Royalty Management states in Article 3 paragraph (1) that “ In the form of commercial public services, anyone may use songs and/or music for profit, provided that LMKN pays royalties to the creator, copyright holder, and/or related rights.

This is different from the use of prohibited songs carried out by the Government. Due to political policies that have occurred to stop and prohibit the singing of the song “Genjer-genjer” until now, this song is connoted as an Indonesian communist Party (PKI) song which was banned during the New Order era. even though the song was created in 1940 during the Japanese occupation.

The form of banning songs and/or music, whether carried out by the New Order government, is a violation of Human Rights, because it curbs democratic freedom of expression, especially in the form of songs and/or music, this violates Article 27 of the UN Charter. Prohibiting the use of songs and/or music may not restrict the expression of artists who have intellectual works, as long as the user has provided royalties to the creator or via LMKN, of course there is no violation of copyright.

Regarding the use of cover songs and/or music without permission, it is a form of violation of human rights, because it is very clear that as creators and related rights holders, they will certainly suffer economic losses, due to not making royalty payments. Likewise regarding the ban on the use of songs created by Achmad Dhani against Once Michael, the ban on the use of songs by Hosan Tobing against the Kotak group, and the ban on the use of songs by Koes Plus and his heirs against T'Koes, including a ban on the use of the song Rhoma Irama by Inul Dara tista. All prohibitions on the use of this song are personal in nature, not in the sense of "absolute" prohibition. According to researchers, what is prohibited by song/music creators is only related to "ethical" issues, even personal and dislike of certain people who use the song, not an absolute prohibition against all parties including the public not being able to use the song. The use of songs in public performance (commercial services), as well as the use of song covers and/or music through content, as long as you have paid royalties to LMKN or the Creator/Copyright Holder, as well as related rights, of course cannot be subject to legal sanctions, because the obligations have been fulfilled, does not violate the rights of the creator or owner of the copyright, as well as any associated rights.

3. Conclusion

1) Summary

In light of the previous discussion, it can be concluded that the use of songs and/or music as long as permission is given It is unquestionably not against Copyright Law No. 28 of 2014 to pay royalties to the creator/rights holder and/or rights holder and The Republic of Indonesia's Law and Human Rights Minister and the Minister of Communication and Information jointly issued this regulation. The use of song and/or music covers is a form of human rights violation, Human rights as outlined in Article 27 of the UN Human Rights Declaration are also violated if the use of songs and/or music covers is prohibited by Copyright Law No. 28 of 2014.

2) Suggestions

So that the use of song covers and/or music does not violate human rights, it is best for users of song covers to make royalty payments through LMKN so that Copyright Owners/Copyright Holders and/or Related Rights Owners enjoy the economic benefits of using song covers that are responsible and do not violate human rights, or violate Copyright Law no. 28 of 2014.

References

- [1] H. OK. Saidin, 2015, *Aspek Hukum Hak Kekayaan Intelektual (Intellectual Property Rights)*, PT. RadaGrafindo Persada, Jakarta.
- [2] Otto Hasibuan, 2008, *Hak Cipta Di Indonesia, Tinjauan Khusus Hak Cipta Lagu, Neighbouring Rights Collecting Society*, PT. Alumni, Bandung.

- [3] Rahmi Jened, 2014, Hukum Hak Cipta (Copyright's Law), PT. Citra Aditya Bakti, Bandung.
 - [4] Eddy Damian, 2014, Hukum Hak Cipta, Alumni, Bandung.
 - [5] Hendra Tanu Atmadja, 2013, Perlindungan Hak Cipta, Berdasarkan Undang-undang No. 19 Tahun 2002 Tentang Hak Cipta, CV Pratiwi Jaya Abadi, Jakarta.
 - [6] Heru Setiyono, 2022, Hak Cipta Lagu Dan/Atau Musik Sebagai Jaminan Fidusia & Pengelolaan Royalti Lagu Dan/Atau, Kepel Press, Yogyakarta.
- Undang-undang Dasar Negara Republik Indonesia
Undang-undang No. 28 Tahun 2014 Tentang Hak Cipta.
Peraturan Pemerintah No. 56 Tahun 2021 Tentang Pengelolaan Royalti Lagu Dan/Atau Musik.
Peraturan Bersama Menteri Hukum dan HAM RI dan Menteri Komunikasi dan Informatika No. 14 Tahun 2015 dan No. 26 Tahun 2015 Tentang Pelaksanaan Penutupan Konten Dan/Atau Hak akses Penggunaan Pelanggaran Hak cipta Dan/Atau Hak Terkait Dalam sistem Elektronik ASIRI (Asosiasi Industri Rekaman Indonesia), Makalah: Pedoman Perjanjian-perjanjian Pembuatan Rekaman.
<https://kbbi.web.id/lagu>, 10 Oktober 2023.

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